

(2008) 11 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31338 of 2008

Usha P. Panicker

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Kerala Municipalities Act, 1960 — Section 101(1)
Kerala Municipalities Act, 1994 — Section 235(1), 295D
Kerala Panchayat Act, 1960 — Section 72

Citation : (2009) 1 ILR (Ker) 7 : (2009) 1 KLJ 43

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : R. Parthasarathy, for the Appellant; K.R. Deepa, GP and Oamprakash, SC, for the Respondent

Judgement

S. Siri Jagan, J.—The petitioner is the Director and Principal of S.B. College of Engineering and Industrial Training Centre (ITC), which is an institution recognised both by the Government of Kerala and the Government of India as an Industrial Training Centre imparting training in various courses like Electronics and Communication, Civil Engineering, Refrigeration and Air-Conditioning, Fitter Training, Draftsman (Civil), Diesel Mechanic course etc. Exts.P1 and P2 orders of the Directorate of the Technical Education prove that the petitioner's institution is recognised by the Governments. The land and building in which the educational institution is functioning, is also owned by the petitioner, who is an individual. The petitioner has been running the ITC from 1976 onwards. According to the petitioner, as per Section 235(1)(d) of the Kerala Municipality Act, the petitioner is entitled to get exemption from payment of property tax on the building of the petitioner, in which the educational institutional is functioning. However, the 3rd respondent issued Ext.P4 notice to the petitioner demanding property tax for the year 1995-96 in respect of the building. The petitioner filed Ext.P5 reply to the same pointing out that the building is exempt from payment of property tax by virtue of Section 235(1)(d). The objections of the petitioner

were rejected by the 3rd respondent and, by Ext.P6 notice dated 16.11.1996, the petitioner was directed to pay property tax within the period prescribed therein, failing which the petitioner was threatened with attachment/prosecution proceedings for coercive recovery of the amounts. The petitioner challenged Ext.P6 notice by filing O.P. No. 1814/1996. Pending disposal of the original petition, the petitioner approached the Director of Municipal Administration seeking exemption of the building from property tax. The said request was rejected by the Director by Ext.P7 order dated 26.3.1996. Against that order the petitioner approached the Government. While so, the original petition, in which Ext.P7 order was also subjected to challenge, was disposed of by this Court, by Ext. P8 judgment dated 1.3.2004, setting aside Exts.P6 and P7 and directing the Government to dispose of the representations submitted by the petitioner. The Government also rejected the claim of the petitioner on the ground that since the building is not owned by the educational institution, the building is not entitled to exemption from property tax, by Ext.P9 order dated 18.9.2008. Challenging Ext.P9 order, the petitioner has filed this writ petition seeking a declaration that the petitioner is not liable to pay property tax for the building in question.

2. A counter affidavit has been filed by the Municipality, in which also they contend that only when the building in question is under the ownership of the institution conducting the educational institution, exemption from property tax is available. According to them, the building in question is owned by the petitioner in her individual capacity and the building is not owned by the educational institution as such and therefore, the petitioner is not entitled to get exemption in respect of the building in question.

3. I have considered the rival contentions in detail.

4. The relevant section of the Kerala Municipality Act, 1994, granting exemption, which is claimed by the petitioner, is Section 235(1)(d), which reads thus:

235.Exemption - (1) The following buildings and lands shall be exempt from the property tax:

xxxx xxxx xxxx (d) building recognised by the Government or registered with the Municipality under this Act and owned and occupied by educational institutions and used only for teaching and libraries open to public.

5. There is no dispute that the educational institution housed in the building in question is recognised by the Governments and the buildings are used only for teaching. Although as noted in the decision of this Court in *Sr. Poly Paradiyil Vs. Angamaly Municipality*, , there is some ambiguity in the wording in the section, taking the section to mean educational institution recognised by the Government as held in that decision, that requirement of the section is squarely satisfied in this case. Now the only other question is whether the second part, viz., ownership and occupation for the purpose of exemption is satisfied. The requirement of section is that the building must be owned and occupied by the educational institution and used only for teaching. Admittedly, the building in

question is used only for teaching students by the educational institution recognised by the Government and that the building is owned by the individual who is running the educational institution. The contention of the respondents appears to be that only the educational establishments owned by institutions would be entitled to such exemption. In support of this contention, the counsel for the Municipality would draw a distinction based on the wording used in Section 101(1)(cc) of the erstwhile Kerala Municipality Act, 1960 and Section 235(1)(d) of the present Kerala Municipality Act, 1994. He also relies on the following observation of a learned Single Judge of this Court in Chackravathy Hostel v. Municipal Commissioner 1995 (2) KLT 588, in support of such contention.

5. The legislative wisdom is unfathomable as well as unquestionable. In the present proceedings what is required to be considered is as specified above (Section 101 of the Kerala Municipalities Act, 1960). It is curious that this provision is conspicuous by its absence in the new legislation in the context (sic) Section 295-D of Kerala Municipalities Act, 1994, Act No. 20/94 having come into force on 30.5.1994 wherein this provision of exemption of tax is limited in its application only to the recognised educational institutions and to the institution in possession of the educational institution. There is also however the provisions of Section 72 of the Kerala Panchayats Act, 1960 which is still in force and on the statute book providing property tax exemption to buildings used for educational purpose and an identical provision is to be found (see S 72(1)(d) the provision in the new Panchayat Raj Act is also similar parimateria to the Kerala Municipalities Act, 1994.

According to him, the above observation would go to show that by the wording used in the present section what is intended by the Legislature is that for becoming eligible for exemption under the new Act, the building should be one owned by an institution conducting the educational establishment in that building.

6. I am unable to see any such distinction as sought to be drawn by the counsel for the Municipality. Section 101(1)(cc) of the erstwhile Kerala Municipalities Act, 1960. read thus:

101. Exemption:- (1) The following buildings and lands shall be exempt from the property tax:

xxxx xxxx xxxx (cc) buildings used for educational purposes including hostels, public buildings and places used for the charitable purpose of sheltering the destitute or animals and libraries and playgrounds which are open to the public.

Notwithstanding the difference in wording of the two sections, I am of opinion that the exemption granted is on account of the user of the building and difference is only that under the earlier Act the user as an educational institution simpliciter qualified for exemption whereas under the present Act, that exemption on account of the user as an educational institution would be available only when the owner of the building itself uses the building for educational purpose, as against the case of a person who uses the building for educational

purpose otherwise than as an owner with an added condition that the educational institution should have been one recognised by the Government or registered with the Municipality as an educational institution. I am not satisfied that the difference in wording leads to an inference that the exemption depends on the type of ownership, whether it is institutional or individual. I am satisfied that the requirement of Section 235(1)(d) would be met if the educational institution is one run by the owner of the building itself. I do not think that the section admits of any other interpretation as suggested by the counsel for the Municipality. Such an interpretation would lead to anomalous and discriminatory results also. If it is held that only educational institutions owned by institutions would be eligible for exemption u/s 235(1)(d), that would be a discrimination as against educational institutions owned and run by individuals. When the intention of the Section is to exempt the building on account of its user as an educational institution by the owner himself, denying such exemption to an individual running an educational institution as a proprietary one, while granting the exemption to educational establishment run by institutions, would certainly be discriminatory, since for the purpose of property tax there is no intelligible differentiation between the two, with reference to the object sought to be achieved by the Section. Therefore, I am satisfied that Ext.P9 order is clearly against the provisions of Section 235(1) (d) of the Kerala Municipality Act, 1994. Accordingly, the same is quashed and it is declared that the petitioner is not liable to pay property tax in respect of the building in question and demand for the same by the respondents is unsustainable.

The writ petition is allowed as above.